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SUPREME COURT. U. S.

No. 52

In the Supreme Court of the United States

OCTOBER TERM, 1961

UNITED STATES OF AMERICA, PETITIONER

v.

THE UNION CENTRAL LIFE INSURANCE COMPANY

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE
STATE OF MICHIGAN

BRIEF FOR THE UNITED STATES

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OPINION BELOW

The opinion of the Supreme Court of the State of Michigan (R. 27-31) is reported at 361 Mich. 283, 195 N.W. 2d 196.

JURISDICTION

The judgment of the Supreme Court of Michigan (R. 32) was entered on September 16, 1960. On December 7, 1960, Mr. Justice Stewart extended the time for filing a petition for a writ of certiorari to and including February 13, 1961. (R. 33.) The petition for a writ of certiorari was filed on February 13, 1961, and was granted on March 27, 1961. (R. 34; 365 U.S. 858.) The jurisdiction of this Court rests on 28 U.S.C. 1257(3).

QUESTION PRESENTED

Whether a state can defeat the validity of a federal tax lien on real property by requiring, as a condition to the filing of notice of such lien, that the notice describe the property to which it attaches.

STATUTES INVOLVED

Sections 3670, 3671, and 3672(a) (1) and (2) of the Internal Revenue Code of 1939, and Section 7.751, 6 Michigan Statutes Annotated (1936 ed.), are set forth in Appendix A, *infra*, pp. 22-24.

STATEMENT

The facts are stipulated. (R. 8-11.) The issue is whether, in this action to foreclose a real estate mortgage, the court below erred in holding that the mortgage lien has priority over a competing federal lien arising out of the mortgagors' non-payment of 1952 federal income taxes. (R. 27.)

The pertinent statutory provisions. Prior to 1956, Michigan law provided that, when the United States wished to acquire a tax lien on real or personal property within the state, the federal tax official was authorized to file, with the county register of deeds, a notice of lien setting forth, among other things, "a description of the land upon which a lien is claimed" (Act 104, Public Acts of 1923, 6 Michigan Statutes Annotated (1936 ed.), Sec. 7.751, Appendix A, *infra*, p. 23).¹ The standard form of notice which the federal

¹ This statute was repealed effective August 11, 1956, and, in place thereof, Michigan enacted the Uniform Federal Tax Lien Registration Act (Act No. 107, Public Acts of 1956, p. 213, 6 Michigan Statutes Annotated (1960 revision), Sec. 7.753). The Uniform Act does not require any description of the land upon which the lien is asserted.

government customarily uses for filing its tax liens, however, does not describe the property subject to the lien (Treasury Regulations on Procedure and Administration (1954 Code), Sec. 301.6323-1(a)(3), Appendix B, *infra*, p. 26; see Opinion of the Attorney General of Michigan, No. 1709, dated September 10, 1953, Appendix C, *infra*, p. 28). For, under the Internal Revenue Code, the federal government has a lien "upon all property and rights to property, whether real or personal, belonging to" a person who, upon demand, neglects or refuses to pay any tax for which he is liable (Section 3670, Internal Revenue Code of 1939, Appendix A, *infra*, p. 22; Section 6321, Internal Revenue Code of 1954).

On September 10, 1953, the Attorney General of Michigan issued an opinion (No. 1709) that the standard form used by the United States Treasury for filing tax liens did not comply with the foregoing Michigan statute, because it did not contain a description of the land upon which the lien was claimed. He therefore concluded that the federal tax lien notice was not entitled to recordation in the office of the register of deeds of any county in Michigan (Appendix C, *infra*, pp. 27-29). (R. 10.) Between the date of that opinion and August 11, 1956, the effective date of repeal of the statute and the substitution of the Michigan Uniform Federal Tax Lien Registration Act (see note 1, *supra*), it was the policy of the office of the Register of Oakland County not to accept for recording notices of

federal tax liens which did not contain a description of the land encumbered. (R. 10.)

The proceedings in the present case. Federal income taxes for 1952, in the principal amount of \$1,368.07, were assessed against Robert G. Peters, Jr., and Helen R. Peters on January 11, 1954, and notice and demand for payment were sent to the taxpayers on January 13, 1954. (R. 11.) On July 2, 1954, a notice of the tax lien arising from this assessment was filed with the Clerk of the United States District Court for the Eastern District of Michigan, Southern Division. (R. 9.) The notice did not contain a description of any real property owned by the taxpayers. (R. 10.)

On November 10, 1954, the taxpayers executed a mortgage in favor of respondent Union Central Life Insurance Company on real property which they owned in Oakland County, Michigan. The mortgage was duly recorded in the office of the County Register of Deeds on November 24, 1954. (R. 8-9.) It is stipulated that, apart from legal questions raised in this action relating to priority of the lien as between the United States and the insurance company, this mortgage is a valid first lien upon the land. (R. 11.)

Upon the taxpayers' default in payments due under the mortgage, the insurance company brought an action to foreclose it in the Circuit Court for Oakland County, joining the United States as a party defendant. The Circuit Court's decree, granting foreclosure, held that the lien of the mortgage was superior to all tax liens filed by the United

States.* (R. 4.) Upon the government's appeal, the Supreme Court of Michigan affirmed with respect to the tax lien for 1952 taxes.* It held that the state had designated an office, within the meaning of Section 6323 of the Internal Revenue Code of 1954,* for the filing of notices of tax lien, and that this office would have accepted the notice had the United States complied with the state law in setting forth in its notice a description of the land encumbered. The court noted that *United States v. Rasmussen*, 253 F. 2d 944 (C.A. 8)—which held that a federal tax lien was valid even though the notice did not contain a description of the real estate encumbered, as required by state law—sustained the contention of the United States. The court, however, rejected the *Rasmussen* decision and instead accepted "as decisive" the contrary holding in *Youngblood v. United States*, 141 F. 2d 912 (C.A. 6), a case which involved the Michigan recording statute here involved. (R. 28-29.)

*The litigation in the courts below also involved liens arising from assessments of 1953 and 1955 income taxes. Since those liens arose subsequent to the execution of the mortgage, they are not involved in the issue before this Court.

*On the other issue presented to it, the Michigan Supreme Court upheld the government's contention that the federal tax lien had priority over payments for local taxes made by the mortgagors. (R. 28-31.) No review was sought of that ruling.

*Although the Michigan court referred to Section 6323 of the Internal Revenue Code of 1954 (Appendix B, *infra*, p. 25), Section 3672(a) of the 1939 Code (Appendix A, *infra*, p. 22) is the governing provision. Section 7851(a)(6)(B) of the 1954 Code makes Section 3672 of the 1939 Code applicable to taxes imposed under both Codes until January 1, 1955. In the instant case, the federal taxes were assessed, and the federal tax lien and the mortgage were recorded, prior to that date.

SUMMARY OF ARGUMENT

The United States has a statutory lien "upon all property and rights to property, whether real or personal" of any person liable for a tax who, after demand, fails to pay (Section 3670, 1939 Code). The lien, however, is not valid as against any mortgagee, pledgee, purchaser or judgment creditor, unless notice thereof has been filed by the collector (1) in an office in which the state or territory where the property is located "has by law authorized the filing of such notice * * *"; or, (2) if the state or territory "has not by law authorized the filing of such notice in an office within the State or Territory," in the office of the clerk of the United States district court for the district in which the property subject to the lien is situated (Section 3672).

When the federal tax lien here involved arose, Michigan authorized the filing of notices thereof in the office of the register of deeds only if the notice contained "a description of the land upon which a lien is claimed." The standard form used by the United States for filing its notice of tax lien does not describe any of the property to which the lien attaches. It is stipulated that the register of deeds of the county in which the real property here involved is situated would not have accepted for filing a federal notice of lien which did not describe the property.

We submit that the State of Michigan cannot require, as a condition of filing a federal tax lien, that the notice describe the real property subject to the lien. Since that condition is invalid, the state has not "authorized the filing of such notice in an office

within the State." In such circumstances, the filing by the United States of its notice of lien with the clerk of the district court gave its lien priority over the subsequently arising mortgage lien.

1. The federal lien for unpaid taxes is a broad lien that attaches to "all" property, including after-acquired property, of a delinquent taxpayer. It is a federal question whether the state can require, as a condition to the filing of notice of such lien, that it describe the real property encumbered.

2. The legislative history of the statutory provisions governing the filing of federal tax liens shows that Congress merely intended to permit the states to designate the *place*, but not the *requirements*, of filing. The first statute for the filing of federal tax liens was passed in 1913, in order to alleviate the hardships that had resulted from the decision in *United States v. Snyder*, 149 U.S. 210, holding, under an earlier federal lien statute which did not provide for the filing of notice, that the federal tax lien was valid as against a bona fide purchaser who had neither notice nor knowledge of such lien. The 1913 statute provided for filing in the district court or, where a state had so authorized, with the county registrar or recorder. The statute was amended in 1928 to provide that the lien was not valid against mortgagees, etc., unless notice was filed "in accordance with" the law of a state or territory which had provided for such filing or, if the state or territory had not so provided, with the clerk of the district court. Under these provisions, it was held, under the same Michigan statute as is here involved, that a notice of lien which did not describe the

real property did not give the federal lien priority over a subsequent purchaser. *United States v. Maniaci*, 36 F. Supp. 293 (W.D. Mich.), affirmed *per curiam*, 116 F.2d 935 (C.A. 6).

Shortly after that decision, the statute was again amended. The provision that, as against mortgagees, etc., the federal lien was not valid until filed "in accordance with" state law was changed to provide that it was not valid until filed as "authorized by" state law. The committee reports show that this change was intended to clarify existing law to make it clear that a state may designate only the local office for filing a federal lien, but cannot impose other requirements. H. Rept. No. 2333, 77th Cong., 2d Sess., p. 173; S. Rept. No. 1631, 77th Cong., 2d Sess., p. 248. This view of the limited authority of the states is further supported by Section 6323(b) of the 1954 Code, which provides that a notice of lien filed with the state is valid if filed in such form as would be valid if filed in the district court. The committee report stated that this latter provision was merely "declaratory of the existing procedure and in accordance with the long-continued practice of the Treasury Department" that the state may designate only the place of filing; and that "the omission from the notices of lien of a description of the property subject to the lien would not affect the validity thereof, even though the law of the State or Territory requires that the notice of lien contain a description of the property subject to the lien." H. Rept. 1337, 83d Cong., 2d Sess., pp. A406-A407.

Unlike the situation in *United States v. Brosnan*, 363 U.S. 237, 240, 242, there is here "a congressional

direction" against the adoption of "local policy * * * as the governing federal law." For Congress has affirmatively stated that the states may specify only the place, but not the requirements for filing federal tax liens.

3. The ruling below that the state can require the United States to describe, in its notice of lien, the real property subject to the tax would impose an unwarranted burden on the United States that would seriously reduce the efficacy of the federal lien as a means of collecting taxes. Tax assessors would be required to make constant checks of real property records in every county where a delinquent taxpayer conceivably might own real estate. There should not be ascribed to Congress the intention to create such a burdensome and unwieldy system of tax collection unless such a purpose clearly appears either in the statute or its legislative history. No such purpose appears here.

4. Permitting a state to apply its own filing requirements to federal tax liens would also defeat the settled principle of achieving uniformity in the enforcement of the tax laws. Congress has never indicated any disposition to subject federal tax liens to the vicissitudes of varying state statutes other than those providing a place for the filing of a notice. Under the decision below, however, the extent and validity of federal tax liens would vary from state to state, depending upon the particular filing requirements of the states. In this case, unlike *Brosnan*, *supra* (363 U.S. at 242), the "need for uniformity" is not "outweighed by the severe dislocation to local property relationships which would result from our

disregarding state procedures." For there would be no such dislocation if the states were denied the power to prescribe the contents of federal lien notices.

ARGUMENT

A STATE CANNOT DEFEAT THE VALIDITY OF A FEDERAL TAX LIEN ON REAL PROPERTY BY REQUIRING, AS A CONDITION TO THE FILING OF SUCH LIEN, THAT THE NOTICE DESCRIBE THE PROPERTY TO WHICH IT ATTACHES

The United States has a statutory lien "upon all property and rights to property, whether real or personal" of any person liable for any tax who, after demand, fails to pay (Section 3670, 1939 Code). The lien arises when the assessment list is received by the collector (Section 3671). The lien, however, is not valid as against any mortgagee, pledgee, purchaser, or judgment creditor, until notice thereof has been filed by the collector (1) in an office in which the state or territory where the property is located "has by law authorized the filing of such notice * * *"; or, (2) if the state or territory "has not by law authorized the filing of such notice in an office within the State or Territory," in the office of the clerk of the United States district court for the district in which the property subject to the lien is situated (Section 3672).

When the federal tax lien here involved arose, Michigan purportedly had authorized the filing of such notices in the office of the county register of deeds. In the case of a lien upon real property, however, the notice was required to contain "a description of the land upon which a lien is claimed." The

standard form used by the United States for filing tax lien notices does not describe any of the property, real or personal, to which the lien attaches.* It was stipulated that, in accordance with the opinion of the Attorney General of Michigan, the register of deeds of the county in which the real property here involved is located would not have accepted for filing a federal notice of lien which did not describe the real property subject to the lien. (R. 10.)

We submit that the State of Michigan cannot require, as a condition to filing a federal tax lien, that the notice describe the real property subject to the lien; and that the State therefore has not "authorized the filing of such notice in an office within the State" under Section 3672 of the 1939 Code. The state authorization to which Section 3672 refers obviously means a valid authorization; and if the state refuses to accept a federal notice of lien for filing except upon conditions which it cannot lawfully impose, it is as though the state has not provided any office for filing. In such circumstances, the United States was authorized to file its tax lien with the clerk of the district court. Since the government filed its notice of lien in the district court four months before the mortgage was executed and recorded, the government's tax lien has priority over the mortgage lien under the settled principle that "the first in time is the first in right." *United States v. New Britain*, 347 U.S. 81, 85-87.

* It merely states that certain taxes have been assessed against the taxpayer, and that "the amount (or amounts) of said taxes,* * * is (or are) a lien (or liens) in favor of the United States upon all property and rights to property belonging to said taxpayer * * *" (see App. C. *infra*, pp. 28-29).

1. The federal lien for unpaid taxes is a broad lien that attaches to "all" property and rights to property of a delinquent taxpayer. It is not limited to property which the taxpayer has when the lien attaches; it also covers after-acquired property. *Glass City Bank v. United States*, 226 U.S. 265. Furthermore, "matters directly affecting the nature or operation of such liens are federal questions, regardless of whether the federal statutory scheme specifically deals with them or not" (*United States v. Brosnan*, 363 U.S. 237, 240; see *United States v. Security Tr. & Sav. Bk.*, 340 U.S. 47, 49). It is, therefore, a federal question whether Congress, in authorizing the filing of notices of federal tax liens in offices designated by state law for that purpose, also authorized the states to require, as a condition to such filing, that the notice describe the real property involved.

2. The legislative history of the Code provisions governing the filing of federal tax liens shows that Congress merely intended to permit the states to designate the place, but not the requirements, of filing.

In *United States v. Snyder*, 149 U.S. 210, this Court held that, under an earlier federal tax lien statute which did not provide for filing of notice (Section 3186 of the Revised Statutes, as amended, 20 Stat. 327), the federal tax lien was valid as against a bona fide purchaser for value of the encumbered property who had neither notice nor knowledge of such lien. In 1913, in order to alleviate the hardships that had resulted from the *Snyder* decision, Congress passed the first Act for the filing of federal tax liens (Act of March 4, 1913, c. 166, 37 Stat. 1016). Congress pro-

vided that the federal tax lien "shall not be valid as against any mortgagee, purchaser, or judgment creditor until notice of such lien shall be filed by the collector in the office of the clerk of the district court of the district within which the property subject to such lien is situated." It further provided that

Whenever any State by appropriate legislation authorizes the filing of such notice in the office of the registrar or recorder of deeds of the counties of that State, or in the State of Louisiana in the parishes thereof, then such lien shall not be valid in that State as against any mortgagee, purchaser, or judgment creditor, until such notice shall be filed in the office of the registrar or recorder of deeds of the county or counties, or parish or parishes in the State of Louisiana, within which the property subject to the lien is situated.

The House Report, after referring to the *Snyder* case, stated (H. Rep. No. 1018, 62d Cong., 2d Sess., p. 2):

* * * the lien is so comprehensive that it covers all the property and rights to property of the delinquent situated anywhere in the United States, and any person taking title to real estate is subjected to the impossible task of ascertaining whether any person, who has at any time owned the real estate in question, has been delinquent in the payment of the taxes referred to while the owner of the real estate in question. The business carried on under the internal-revenue law may be at a great distance from the property affected by this secret lien, but this will not relieve the property from the lien.

The statute was amended in 1928 to provide that the tax lien was not valid as against mortgagees, purchasers or judgment creditors until notice thereof was filed by the collector "in accordance with the law of the State or Territory in which the property subject to the lien is situated, whenever the State or Territory has by law provided for the filing of such notice," or "in the office of the clerk of the United States District Court for the judicial district in which the property subject to the lien is situated, whenever the State or Territory has not by law provided for the filing of such notice" (Section 613, Revenue Act of 1928, c. 852, 45 Stat. 791). The Committee Reports * give no explanation for this change.

While these amended provisions were in effect, *United States v. Maniaci*, 36 F. Supp. 293 (W.D. Mich.), affirmed *per curiam*, 116 F. 2d 925 (C.A. 6), was decided. It involved the same Michigan filing statute as is involved in the instant case. The notice of the federal lien was filed both with the clerk of the district court and with the county register of deeds. The federal lien was held invalid as to a subsequent purchaser, because the notice of lien did not contain a description of the land as required by the Michigan statute. The court ruled that by providing for filing "in accordance with" the law of the State or Territory in which the property subject to the lien is situated, Congress did not merely authorize the states "to designate by law the place of filing notice of lien," but "required the Collector to file notices of lien in accordance

* H. Rep. No. 2, 70th Cong., 1st Sess., p. 35; S. Rep. No. 980, 70th Cong., 1st Sess., p. 43.

"with the laws of the respective states * * *" (36 F. Supp. at 296, emphasis in original).

Within two years after the court of appeals' affirmation in *Maniaci*, Congress again amended the lien ~~statute~~ statute (Section 505, Revenue Act of 1942, c. 619, 56 Stat. 957). The provision that, as against mortgagees, pledgees, etc., the federal lien was not valid until filed "*in accordance with* the law of the State or Territory" was changed to provide that it was not valid until filed "*In the office in which the filing of such notice is authorized by* the law of the State or Territory" (emphasis added). The Committee reports show that Congress thereby intended to restrict the authority of the states to specifying the *place* of recording, and thus in effect to overturn the *Maniaci* case.*

Thus, the House Committee stated (H. Rep. No. 2333, 77th Cong., 2d Sess., p. 173, emphasis added):

This section of the bill *clarifies* section 3672(a) of the code by providing expressly that the notice required to validate a lien for Federal tax against any mortgagee, pledgee, purchaser, or judgment creditor shall be sufficient if filed in the office in which the filing of such notice is authorized by the law of the State or Territory in which the property subject to the lien is situated, *without regard to*

* In 1939, Congress added "pledgees" to the category of interests protected by Section 3672 against unfiled federal tax liens. Section 401, Revenue Act of 1939, c. 247, 53 Stat. 862.

* See *United States v. Rasmussen*, 253 F. 2d 944, 947 (C.A. 8); *Union Planters National Bank v. Godwin*, 140 F. Supp. 528, 534, n. 7 (E.D. Ark.).

other general requirements with respect to recording prescribed by the law of such State or Territory.

Similarly, the Senate Committee stated (S. Rep. No. 1631, 77th Cong., 2d Sess., p. 248, emphasis added):

The Treasury Department has consistently taken the position that section 3672 of the Code and the corresponding provisions of prior law authorize the State or Territory *only to designate the local office for the filing of the notice of the lien. This section of the bill, which clarifies section 3672(a), as amended, * * * is merely declaratory of the existing procedure and in accordance with the long-continued practice of the Treasury Department, which has been questioned in the courts.*

In sum, the provision for filing in the office where filing "is authorized by" state law, permits the state "only to designate the local office for the filing," but does not authorize it to prescribe "other general requirements with respect to recording * * *." Any requirement that once may have existed for filing "in accordance with" state law was eliminated from the Code in 1942.*

* The court below relied upon *Youngblood v. United States*, 141 F. 2d 912 (C.A. 6), which held that the district court had improperly issued a writ of mandamus directing a county register of deeds in Michigan to file a federal tax lien which did not describe the land of the delinquent taxpayer. The court of appeals followed its earlier decision in the *Maniaci* case (*supra*, p. 14), and ruled (p. 914) ~~and~~ that the 1942 amendment "evidences no change of attitude on the part of Congress in its recognition of the right of a state to regulate the filing of federal tax lien notices." This ruling ignores the legislative history cited in the text, showing that Congress did not

Unlike the situation in *United States v. Brosnan*, 363 U.S. 237, there is here "a congressional direction" against the adoption of "local policy * * * as the governing federal law" (pp. 242, 240). For Congress has affirmatively stated that the states may specify only the place, but not the requirements, for filing federal tax liens. As the court stated in *United States v. Rasmussen*, 253 F. 2d 944, 946 (C.A. 8), in upholding the validity of a federal lien where state filing requirements had not been met, the legislative history of the federal filing provisions indicates that Congress, "in allowing a State, as a matter of local benefit or convenience, to make a designation of a particular office for the filing of such notice," did not thereby intend "to permit each State also to make prescriptions as to the form and content of the notice which the Government was filing."

The conclusion that a state cannot prescribe the contents of a federal notice of lien is further supported by Section 6323(b) of the 1954 Code, which provides:

Form of Notice.—If the notice [of lien] filed pursuant to subsection (a)(1) is in such form as would be valid if filed with the clerk of the United States district court pursuant to subsection (a)(2), such notice shall be valid notwithstanding any law of the State or Territory regarding the form or content of a notice of lien.

The House Committee Report stated that the "Treasury Department has consistently taken the position

intend to authorize the states to impose their own filing requirements on federal tax lien notices. Contra: *United States v. Rasmussen*, 253 F. 2d 944 (C.A. 8), discussed in the text, *supra*.

that section 3672 of the 1939 Code and the corresponding provisions of prior law authorize the State or Territory only to designate the local office for the filing of the notice of the lien," and that the new provision was merely "declaratory of the existing procedure and in accordance with the long-continued practice of the Treasury Department." H. Rep. No. 1337, 83d Cong., 2d Sess., pp. A406-A407; see S. Rep. No. 1622, 83d Cong., 2d Sess., pp. 575-576. Indeed, the House Committee dealt specifically with the problem involved in this case. It stated (pp. A406-A407, emphasis added) :

Subsection (b) is designed to eliminate any question as to the validity of the lien as against mortgagees, pledgees, purchasers, and judgment creditors, where notice thereof is filed in the office designated by the law of the appropriate State or Territory, even though the notice does not comply with other requirements of the law of the State or Territory as to the form or content of the notice. For example, *the omission from the notice of lien of a description of the property subject to the lien would not affect the validity thereof, even though the law of the State or Territory requires that the notice of lien contain a description of the property subject to the lien.* * * *

3. The ruling below that the state can require the United States to describe, in its notice of lien, the real property subject to the lien, would impose on the United States an unwarranted burden that would seriously reduce the efficacy of the federal tax lien as a means of collecting taxes. For the government's tax assessors would be required, for all the hundreds of thousands of tax liens filed each year, to make

checks of real property records in every county where taxpayers conceivably might own real estate in an effort to ascertain their holdings. Moreover, since federal liens cover after-acquired property, the tax assessors, in order to protect the government fully, would be required constantly to recheck the real property records to discover whether taxpayers had subsequently acquired any realty. There should not be ascribed to Congress the intention to create such a burdensome and unwieldy system of tax collection unless such a purpose clearly appears either in the statute or in its legislative history. The Code does not impose or even suggest such a requirement; on the contrary, it gives the federal government a broad general lien upon "all property and rights to property" of delinquent taxpayers. And, as we have shown, the legislative history affirmatively establishes that Congress merely intended to authorize the states to designate the place of filing, but not to impose their own substantive filing requirements.

4. Permitting a state to apply its own filing requirements to federal tax liens would also defeat the "cardinal principle of Congress in its tax scheme" of achieving "uniformity, as far as may be" (*United States v. Gilbert Associates*, 345 U.S. 361, 364). Tax liens "form part of the machinery for the collection of federal taxes" to which the objective of uniformity applies (*United States v. Brosnan*, 363 U.S. 237, 241). The primary purpose of the federal filing statutes has been to afford notice of existing federal tax liens for the protection of would-be mortgagees, pledgees, purchasers, or judgment creditors acquiring an interest in property of the delinquent taxpayer. Con-

gress has never indicated any disposition to subject the federal tax lien to the vicissitudes of varying state statutes other than those providing a place for the filing of notice of the federal lien. See *supra*, pp. 12-18. Indeed, this Court long ago indicated that the federal tax system is not subject to the recording laws of the States. *United States v. Snyder*, 149 U.S. 210. Under the rule announced by the court below, however, the extent and validity of federal tax liens would vary from state to state depending upon the particular filing requirements of the different states.¹⁰

In the *Brosnan* case, *supra*, this Court stated (363 U.S. at 242) that the "need for uniformity in this instance [extinguishment of federal liens] is outweighed by the severe dislocation to local property relationships which would result from our disregarding state procedures." There would be no similar dislocation, however, if the states were denied the power to prescribe the contents of federal lien notices.¹¹ Since the federal tax lien attaches to all of a taxpayer's property, a notice of lien that identifies the taxpayer is notice that all of his property is encumbered. The respondent itself states (Br. in Opp., p. 7) that in Michigan "many individuals purchasing real estate or interests therein, as well as title and mortgage companies have, * * * relied upon the rec-

¹⁰ The ruling below would pose a particularly serious problem in the twelve states which follow the Torrens system of land title registration. See 6 Powell, *Law of Real Property*, Sec. 921. In our petition, we erroneously stated that Michigan also follows the Torrens system.

¹¹ Indeed, the state of Michigan has impliedly so recognized by its action in 1956 in adopting the Uniform Federal Tax Lien Registration Act (see note 1, *supra*, p. 2), under which the standard form of notice is acceptable.

ords of the Register of Deeds rather than make additional searches in other offices where a notice of lien might be filed." If the state accepts the federal notice of lien form, it becomes available in the register of deeds office to indicate which taxpayers' property is subject to such liens. If, on the other hand, the state continues to reject the federal form, the only other office where a federal notice of lien may be filed is the clerk's office in the district court. It could hardly cause any "severe dislocation to local property relationships" (*Brosnan, supra*) if the records of that office had also to be checked.

Furthermore, reversal of the decision below would not lead to any interference by the federal government with the state's settled lien filing practices. For the Michigan statute here involved applies only to federal tax liens; and the state is, of course, free to follow whatever procedures it deems appropriate in dealing with the filing of locally-created liens.

CONCLUSION

The decision of the Supreme Court of Michigan should be reversed and the case remanded with directions to give the federal tax lien priority over the respondent's mortgage lien.

Respectfully submitted.

ARCHIBALD COX,
Solicitor General.

LOUIS F. OBERDORFER,
Assistant Attorney General.

I. HENRY KUTZ,
FRED E. YOUNGMAN,
Attorneys.

SEPTEMBER 1961.

APPENDIX A

Internal Revenue Code of 1939:

SEC. 3670. PROPERTY SUBJECT TO LIEN.

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person.

(26 U.S.C. 1952 ed., Sec. 3670.)

SEC. 3671. PERIOD OF LIEN.

Unless another date is specifically fixed by law, the lien shall arise at the time the assessment list was received by the collector and shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time.

(26 U.S.C. 1952 ed., Sec. 3671.)

SEC. 3672 [as amended by Sec. 401 of the Revenue Act of 1939, c. 247, 53 Stat. 862, and Sec. 505 of the Revenue Act of 1942, c. 619, 56 Stat. 798]. VALIDITY AGAINST MORTGAGEES, PLEDGEES, PURCHASERS, AND JUDGMENT CREDITORS.

(a) *Invalidity of Lien without Notice.*—Such lien shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed by the collector—

(1) *Under state or territorial laws.*—In the office in which the filing of such notice is authorized by the law of the State or Territory in which the property subject to the lien is situ-

ated, whenever the State or Territory has by law authorized the filing of such notice in an office within the State or Territory; or

(2) *With clerk of district court.*—In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State or Territory has not by law authorized the filing of such notice in an office within the State or Territory; or

* * * * *

(26 U.S.C. 1952 ed., Sec. 3672.)

6 Michigan Statutes Annotated (1936 ed.):

CHAP. '68. MISCELLANEOUS PROVISIONS

* * * * *

FILING OF FEDERAL TAX LIENS

Act 104, 1923, p. 142; eff. Aug. 30

An Act to provide for and to authorize the filing of notices of federal tax liens by the United States of America in the office of the register of deeds in the various counties of this state, pursuant to section three thousand one hundred eighty-six [3186] of the revised statutes of the United States

The People of the State of Michigan Enact:

SEC. 7.751. *U.S. Tax Liens; Filing of Notice, Contents; Register of Deeds, Duty.* Section 1. That whenever the collector of internal revenue for any district in the United States, or any tax collecting officers of the United States having charge of the collection of any tax payable to the United States, shall desire to acquire a lien in favor of the United States for any tax payable to the United States against any property, real or personal, within the State of Michigan pursuant to section three thousand one hundred eighty-six [3186] of the revised statutes of the United States, he is

hereby authorized to file a notice of lien, setting forth the name and the residence or business address of such taxpayer, the nature and the amount of such assessment, and a description of the land upon which a lien is claimed, in the office of the register of deeds in and for the county or counties in Michigan in which such property subject to such lien is situated; and such register of deeds shall, upon receiving a filing fee of fifty [50] cents for such notice, file and index the same in a separate book, entitled "Record of the United States Tax Liens," indexing the same according to the name of such taxpayer as stated in the notice; all in pursuance of said section three thousand one hundred eighty-six [3186] of the revised statutes of the United States. (C.L. '48, § 3746.)

APPENDIX B

Internal Revenue Code of 1954:

SEC. 6323. VALIDITY AGAINST MORTGAGEES, PLEDGEES, PURCHASERS, AND JUDGMENT CREDITORS.

(a) *Invalidity of Lien Without Notice.*—Except as otherwise provided in subsection (c), the lien imposed by section 6321 shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed by the Secretary or his delegate—

(1) *Under state or territorial laws.*—In the office designated by the law of the State or Territory in which the property subject to the lien is situated, whenever the State or Territory has by law designated an office within the State or Territory for the filing of such notice; or

(2) *With Clerk of district court.*—In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State or Territory has not by law designated an office within the State or Territory for the filing of such notice; or

(3) *With clerk of district court for District of Columbia.*—In the office of the clerk of the United States District Court for the District of Columbia, if the property subject to the lien is situated in the District of Columbia.

(b) *Form of Notice.*—If the notice filed pursuant to subsection (a)(1) is in such form as would be valid if filed with the clerk of the United States district court pursuant to subsection (a)(2), such notice shall be valid notwithstanding any law of the State or Territory

regarding the form or content of a notice of lien.

(26 U.S.C. 1958 ed., Sec. 6323.)

Treasury Regulations on Procedure and Administration (1954 Code):

Sec. 301.6323-1. *Validity of lien against mortgagees, pledgees, purchasers, and judgment creditors.*—(a) *Invalidity of lien without notice.*

(3) *Form of notice.*—The form to be used for filing the notice of lien shall be Form 658, "Notice of Federal Tax Lien under Internal Revenue Laws". Such notice, filed in the office designated by the law of a State or Territory, shall be valid notwithstanding any law of the State or Territory regarding the form or content of a notice of lien. For example, the omission from the notice of lien of a description of the property subject to the lien will not affect the validity thereof, even though the law of the State or Territory requires that the notice of lien contain a description of the property subject to the lien.

APPENDIX C

Opinion of the Attorney General of Michigan, No. 1709, dated September 10, 1953 (Biennial Report, pp. 216-217, of the Attorney General of Michigan (1952-1954)):

FEDERAL TAX LIEN NOTICE—REGISTER OF DEEDS—Federal tax lien notice claiming lien on all property of taxpayer not entitled to recordation where it does not describe land on which lien is sought.

SEPTEMBER 10, 1953.

No. 1709

Mr. JOSEPH E. KILLIAN,
*Prosecuting Attorney, Berrien County,
Commercial Bank Building,
St. Joseph, Michigan*

DEAR SIR: You have presented for my opinion the following question:

"Is a notice of federal tax lien, issued pursuant to 26 U.S.C.A. section 3672, entitled to recordation in the office of a county register of deeds where it omits to describe the land of the taxpayer against whom the lien is sought?"

The federal law (26 U.S.C.A., § 3672) requires that notices of tax liens be recorded in accordance with the laws of the particular state where provision has been made for the filing of such liens.

Pursuant to federal law, Michigan provided for the filing of such liens by Act No. 104 of the Public Acts of 1923 (C.L. 1948, § 211.521 [Stat. Ann. § 7.751]).

This act provides as follows:

"That whenever the collector of internal revenue for any district in the United States, or

any tax collecting officers of the United States having charge of the collection of any tax payable to the United States, shall desire to acquire a lien in favor of the United States for any tax payable to the United States against any property, real or personal, within the state of Michigan pursuant to section three thousand one hundred eighty-six (3186) of the revised statutes of the United States, he is hereby authorized to file a notice of lien, setting forth the name and the residence or business address of such taxpayer, the nature and the amount of such assessment, and a description of the land upon which a lien is claimed, in the office of the register of deeds in and for the county or counties in Michigan in which such property subject to such lien is situated; and such register of deeds shall, upon receiving a filing fee of fifty (50) cents for such notice, file and index the same in a separate book, entitled 'Record of United States Tax Liens,' indexing the same according to the name of such taxpayer as stated in the notice; all in pursuance of said section three thousand one hundred eighty-six (3186) of the revised statutes of the United States."

This section has been considered in various federal court cases, including *Youngblood v. United States*, 141 F (2) 912, and has been declared to be reasonable and that federal tax notices must comply with its terms in order to be recorded. The act requires that any land against which a lien is sought shall be described but does not require any description in the case of personal property.

You have supplied me with a copy of Treasury Department Form No. 608, which you advise is the form used to file for liens. This form recites in part as follows:

"Pursuant to the provisions of Sections 3670, 3671, and 3673 of the Internal Revenue Code of the United States, notice is hereby given that

there has been assessed * * * against the following-named taxpayer, taxes (including interest and penalties) * * * and that by virtue of the above-mentioned statutes the amount (or amounts) of said taxes, * * * is (or are) a lien (or liens) in favor of the United States upon all property and rights to property belonging to said taxpayer, * * *

Since the form of notice used claims a lien on all property of the taxpayer and does not contain a description of any land, the notice is not entitled to recordation since it fails to comply with the provisions of Act 104 of the Public Acts of 1923, as set forth above.

Yours very truly,

FRANK G. MILLARD,
Attorney General.

WBE:ms